

REMARKS

The Office Action mailed November 14, 2005 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

I. Claims Summary

Claims 46, 47, 49, 54, and 56 are currently pending in the application, with claims 46 and 54 being independent claims. Claims 1-45, 48, 50-53, and 55 are cancelled; claims 46 and 54 are amended; and claim 56 is added, in accordance with the above amendments.

With regard to the claims currently-pending in the application, the following claim rejections were submitted by the Examiner in the outstanding Office Action:

- Claims 46, 47, and 49 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 6,253,582 to Driggars; and
- Claim 54 is rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the enablement requirement.

II. Discussion of Terminology

Although not specifically set forth, the Office Action appears to maintain an objection to the specification based upon the definition of the term "interweaving." The Applicants respectfully submit that the above Amendment to the Specification remedies the objection.

III. Information Disclosure Statement

The Office Action indicates that the Information Disclosure Statement filed June 23, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance of each patent not in the English language. In response, the Applicants refer to MPEP §609.04(a), which states "Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office." The Information Disclosure Statement included a PCT Search Report in compliance with this rule. Accordingly, the Applicants respectfully request

that the Examiner return an initialed copy of the PTO Form 1449 to indicate consideration of the references cited therein.

IV. Discussion of Rejections

Discussion of Claims 46, 47, and 49

The Office Action rejects independent claim 46 as being anticipated by Driggars. Independent claim 46 recites an article of apparel at least partially formed from an interlooped textile that includes a first yarn and a second yarn. The first yarn exhibits a dimensional-transformation upon exposure to water. The first yarn has a first set of dimensions when unexposed to the water, and the first yarn has a second set of dimensions when exposed to the water. The second yarn is substantially dimensionally-stable upon exposure to the water. The textile has a first surface and an opposite second surface, with the first yarn being substantially concentrated at the first surface. A structure of the textile is modified by exposing the textile to the water such that the first yarn transforms from the first set of dimensions to the second set of dimensions to form a plurality of nodes on the first surface. Each of the nodes are at least partially formed from a plurality of segments of the second yarn.

i. Official Notice

The rejection makes various assertions regarding Driggars that are unsupported by Driggars. More particularly, the Office Action appears to take Official Notice of various assertions, including the following with emphasis added:

- “This would change the texture of the fabric making the hand *feel rougher*, due to the increase in the yarn diameter”
- “This would make the fabric *feel as if it has nodes* extending from the fabric”
- “...would *cause nodes on the surface* of the fabric giving it a rough texture”

Although the Examiner does not specifically classify these statements as being Official Notice, this is clearly an improper use given that the facts asserted are not well-known, and are not common knowledge in the art and not capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record that may be taken by the examiner must

be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

The Applicants respectfully traverse the Examiner’s unsupported assertions that the fabric would “feel rougher,” “feel as if it has nodes,” and “cause nodes on the surface.” Accordingly, the Applicants respectfully requests that the Examiner provide documentary evidence in the next Office Action if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

ii. Structural Recitation

Independent claim 46 specifically recites that a plurality of nodes are formed on the first surface. In order to demonstrate that Driggars purportedly anticipates independent claim 46, the rejection states, for example, that exposing the textile to water “would make the fabric *feel as if it has nodes* extending from the fabric.” Independent claim 46 does not recite that the textile would feel as if it has nodes, but actually recites the presence of nodes. Moreover, the mere fact that the textile in Driggars would feel as if it has nodes (which the Applicants do not concede), does not actually mean that the textile has nodes. The nodes in independent claim 46 are a structural recitation and are actually present in the textile. In order for Driggars to anticipate independent claim 46, Driggars must actually disclose nodes, not impart the feeling of nodes.

iii. Plurality of Segments

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). According to independent claim 46, each of the nodes are at least partially formed from a plurality of segments of the second yarn. As a first matter, the Office Action does not even address this limitation and includes, therefore, no assertion that Driggars meets this limitation. Secondly, it appears from the rejection that the Examiner intends each node in Driggars to be one of the various exposed portions of yarn depicted in Figure 2. Each of these exposed portions, however, are only formed from one segment of yarn, not a plurality of segments of the yarn. Accordingly, Driggars does not disclose a configuration wherein each of the nodes are at least partially formed from a plurality of segments of the second yarn.

Based upon the above discussion, the Applicants respectfully submit that independent claim 46 is allowable over Driggar. In addition, claims 47 and 49 should be allowable for at least the same reasons.

Discussion of Claims 54 and 56


The Office Action rejects independent claim 54 as being non-enabling. According to the rejection, recitations regarding an increase in permeability of the textile are not adequately described in the specification. Independent claim 54 is amended to remove these recitations. The Applicants respectfully submit that independent claim 54 is, therefore, allowable. In addition, claim 56 should be allowable for at least the same reasons.

V. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being filed by facsimile transmission on March 14, 2006 with a Request For Continued Examination, a one-month Petition For Extension of Time, and an Information Disclosure Statement. Should additional fees be deemed necessary for consideration of this Amendment, such fees are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for payment. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 425-6800.

Respectfully submitted,

By: 
Byron S. Kuzara
Registration Number 51,255

Banner & Witcoff, Ltd.
1001 G Street, N.W.
Washington, D.C. 20001-4597
Telephone: (202) 824-3000

Dated: March 14, 2006